

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA

Plaintiff,

Vs.

Civil No. 11-1072 WDS/KBM

2011 GMC DENALI
VIN:1GKS2EEF3BR177397

2004 NISSAN ARMADA
VIN:5N1AA08A84N740012

Defendants.

and

ISABEL C. GUTIERREZ
JP MORGAN CHASE BANK NA, AND
BANK OF THE WEST,

Claimants.

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RESPONSE AND PLEADINGS TO FORFEITURE *IN REM*

Claimant states:

JURISDICTION AND VENUE

1. The civil action in rem for the return of forfeited Defendant Vehicles is subject to jurisdiction of this Court in the District of New Mexico.
2. The United States District Court for the District of New Mexico has jurisdiction.

3. Proper Venue in Albuquerque, New Mexico.
4. The stated “res” or Defendant Property subject to this action is stated here as
 - (a). a 2011 GMC MPV VIN:1GKS2EEF3BR177397, and
 - (b) a 2004 Nissan VIN:5N1AA08A84N740012(hereafter referred as “Defendant Vehicles”).

PARTIES AND CLAIMANTS

5.
 - (a) Isabel C. Gutierrez at P.O. Box 708, Columbus N.M. 88029 and/or 201 S. Taft St., Columbus, N.M. 88029;
 - (b) JP Morgan Chase Bank NA at P.O. Box 901098, Forth Worth, TX 76101;
 - (c) Bank of the West at P.O. Box 8160, Walnut Creek, CA 94597 and whose lien on the 2004 Nissan has been already paid by Claimant Isabel C. Gutierrez.

STATEMENT OF FACTS

6. Information and facts in the indictment USDC D.N.M. Criminal No. 11CR487 RB are purportedly correct and related to this response to complaint for forfeiture of Defendant Vehicles. The 2004 Nissan Armada Defendant Vehicle was directly mentioned in this complaint (#12) as being involved in one incident in this complaint. The outcome of this incident, dated February 20, 2010, did not lead to forfeiture, arrest, or any kind of subsequent legal action by law enforcement agencies to point out or to deem to point out to the Claimants, that there was any illegal activity, real or perceived, involved in this incident. In spite of various other incidents mentioned in the indictment involving various law enforcement agencies and in their respective time frames, did not lead to any subsequent legal actions warranted to illegal activity, or even a suspicion of perceived illegal activity, against anybody including Claimants Isabel and Roberto R. Gutierrez. As it has been subsequently exposed in the related “Fast and Furious”

case at Congressional House Oversight Committee and Governmental Reform hearings of Department of Justice Attorney General Eric Holder, the criminal case cited by plaintiffs and being related to the targeted Congressional one, the findings of the Committee can be summarized: “As presented, the methodology of the tactics used were labeled as “risky”, “careless”, “reckless”. The use of normally accepted investigating techniques was distorted.” Law enforcement agencies tactics in the mentioned case dealing with firearm trafficking and similar charges have been extremely criticized and condemned for affecting negatively innocent parties including the Claimants. This knowingly convoluted performance by law enforcement construed the otherwise innocent Defendant Vehicles to alleged illegal participation merited to this highly irregular behavior.

7. Information regarding arrests of defendants March 10, 2011 in Columbus New Mexico is purportedly correct. Agents for Homeland Security Investigations (HSI), Customs and Border Protection (CBP) Air and Marine, Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE), Drug Enforcement Administration (DEA), and New Mexico State Police (NMSP), as a result of aforementioned indictment, arrested various persons in Columbus, New Mexico. One of these persons arrested was Blas Gutierrez, son of claimants Isabel and Roberto Gutierrez. Blas Gutierrez and family had been residing at claimants Isabel and Roberto Gutierrez’s house located at 201 S. Taft Street in Columbus, New Mexico until August of **2010**.

8. During execution of federal search warrant of Blas Gutierrez’s family residence at 400 N. Iowa Street in Columbus, New Mexico in March 10, **2011**, Defendant Vehicle 2011 GMC was seized by agents at this location. Defendant Vehicle 2004 Nissan was seized at an unknown location under conditions unknown to claimants Isabel Gutierrez and Roberto Gutierrez.

9. Information regarding Blas Gutierrez's guilty plea to counts in indictment against him is unknown to Claimants Isabel and Roberto Gutierrez.

10. Claimant Isabel and Roberto Gutierrez's son, Blas Gutierrez, state that Blas did have complete, unlimited normal access and use of their vehicles, including the Defendant Vehicles. Blas Gutierrez and his family lived with claimant Isabel Gutierrez and her husband at claimant's Isabel Gutierrez's house located at 201 S. Taft St. in Columbus. The 2004 Nissan Defendant Vehicle has been legally titled in New Mexico since 2004 to claimant Isabel Gutierrez. In contrast, the Defendant Vehicle 2011 GMC was obtained by claimant Isabel Gutierrez in mid-January of 2011 until its seizure a month and a half later in March 10, 2011. In the Plaintiff's Complaint for Forfeiture, alleged use by Blas Gutierrez of 2011 GMC is misstated as an attempt to conceal any supposed illegal activity. Claimant Isabel Gutierrez restates use of Defendant Vehicles by his son has been a normal, allowed occurrence and she was totally unaware of any wrongdoing use, illegal use, or concealed use, actual, attempted, or perceived. Claimants Isabel and Roberto Gutierrez further state that a Village of Columbus vehicle, a 2007 Ford F-150 white truck used by then trustee Blas Gutierrez in alleged illegal activities, and also seized by the agencies involved in the arrests in Columbus New Mexico on March 10, 2011, has since been returned to the village. Claimants Isabel and Roberto Gutierrez point out that another vehicle of very similar physical characteristics (SUV body, maroon color, etc.) to GMC Denali Defendant Vehicle and also belonging to the Village of Columbus Police Department, a GM Tahoe, was frequently used by then trustee and son Blas Gutierrez before March 10, 2011 and was most likely mistaken for Defendant Vehicle GMC Denali that had been owned by Claimants Isabel and Roberto Gutierrez for approximately 45 days only. As mentioned at the House Oversight Committee hearings of Attorney General Eric Holder, "Cooperation in the Fast

and Furious case (and this related case) between Law Enforcement Agencies involved was seriously lacking.” It is not difficult to conclude the plausibility of this error. GMC Denali Defendant vehicle had been purchased in late January 2011. Its use by Blas Gutierrez was very minimal, contrary to assertions by the Plaintiff’s theory of multiple use to conceal any illegal activity. In fact, under the Second Amendment Rights of the U.S. Constitution, supreme law of the United States of America, the Claimants Isabel and Roberto Gutierrez assert that their son, Blas Gutierrez is an adult U.S. citizen, resident of the state of New Mexico, with no prior criminal record, and no physical or mental disabilities and under these qualifications give him the right to legally buy and transport firearms in the state of New Mexico.

11. Claimants Isabel and Roberto Gutierrez states that Defendant 2004 Nissan Vehicle was used by son Blas Gutierrez since its original purchase date in 2004 for ordinary, daily use and Claimants Isabel and Roberto Gutierrez did not authorize, promote or condone its use for any alleged illegal activity.

12. Claimants Isabel and Roberto Gutierrez affirm that details of a stop incident by U.S. Border Patrol, a division of Department of Homeland Security under Secretary Janet Napolitano, of Defendant 2004 Nissan of January 14, 2010, were unknown to them. This incident did not result in arrests, seizure, or any subsequent legal action that would have been reasonably expected and executed by law enforcement agencies had something illegal been done or determined to have been done by Defendant Vehicle Nissan and/or persons involved. In addition, in a unwarranted next day search of Claimants Isabel and Roberto Gutierrez’s house by law enforcement agency(ies) (ICE?) unbeknownst to them at the time, and still undetermined or unknown to them, the 2004 Nissan Defendant Vehicle was searched again along with claimant’s house and netted no results. Consent of the search was granted by Blas Gutierrez, as the